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SUPREME COURT, U.S.

CASE NO. 81-2309

IN THE

SUPREME COURT of the UNITED STATES

October Term, 1981

LOUIE L. WAINWRIGHT,

Petitioner,

-VS-

STEVEN HENRY ROBERTS,

Respondent.

On Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals.

BRIEF OF RESPONDENT

COUNSEL OF RECORD

STEVEN HENRY ROBERTS
#A044449
SUMTER CORRECTIONAL INST.
POST OFFICE 667 B-136
BUSHNELL, FLORIDA 33513

PRO SE

QUESTION PRESENTED FOR REVIEW

THE DECISION OF THE ELEVENTH CIRCUIT COURT OF APPEALS IN ROBERTS VS. WAINWRIGHT, 666 F.2d 517 (11 th Cir. 1982) IS CORRECT AND IS NOT IN DIRECT CONFLICT WITH CHAMBERS VS. MARONEY, 399 U.S. 42 (1970); ENGLE VS. ISAAC, ____U.S._____, 102 S.Ct. 1558 (1982) AND UNITED STATES VS. DECOSTER, 624 F.2d 196 (D.C. Cir. 1979), AND IS NOT AN ERRONEOUS CONSTRUCTION OF 28 U.S.C. 2254 AND THE EXHAUSTION REQUIREMENTS.
(Rephrased)

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STATEMENT OF CASE

Following the return of an indictment for rape, Respondent was convicted and sentenced to the Department of Corrections for a term of thirty (30) years.

His rape conviction was subsequently reversed on appeal in Roberts vs. State, 335 So.2d 285 (Fla. 1976). On remand to the trial court, Respondent pleaded guilty to attempted rape on September 24, 1976, and was placed on probation for a period of ten (10) years.

On September 20, 1978, an affidavit was issued charging Respondent with violating the conditions of his probation. On March 13, 1980, Respondent's probation was revoked. At the conclusion of the revocation hearing, Respondent was sentenced to the Florida Department of Corrections for a term of fifteen (15) years.

After unsucessfully attempting to vacate the judgement and sentence entered by the State of Florida, Respondent filed federal petition for a writ of habeas corpus pursuant to Title 28 United States Code 2254,

claiming:

1. Conviction obtained by plea of guilty which was not made voluntarily with knowledge of the consequences.

2. Denial of effective assistance of counsel.

On May 28, 1981, the District Court ruled that Respondent's first claim was without merit and that Respondent was entitled to no relief as to his second claim, since he failed to demonstrate with specificity, in what way he was prejudiced by counsel's performance. In addition, the District Court found that Respondent had complied with the exhaustion requirements of Title 28 United States Code 2254, in presenting his claims to the Florida Courts.

Respondent then appealed to the Eleventh Circuit Court of Appeals, claiming that the District Court error in denying his habeas corpus petition and error as a matter of law in dismissing the petition without an federal evidentiary hearing. No question of exhaustion was argued on appeal, since the District Court

properly found that Respondent had complied with the exhaustion requirements.

On January 22, 1982, the Court of Appeals for the Eleventh Circuit, reversed. Roberts vs. Wainwright, 666 F.2d 517 (11th Cir. 1982).

The Petitioners then filed Motion for Rehearing, claiming that the Eleventh Circuit decision in the instant case permitting evidentiary hearing, cut across the correct standard of proving ineffective assistance of counsel in habeas corpus proceedings.

On March 16, 1982, the Eleventh Circuit Court of Appeals denied rehearing. On April 21, 1982, the Eleventh Circuit Court of Appeals, granted Petitioner's Motion to Stay Mandate.

SUMMARY OF ARGUMENT

The Eleventh Circuit Court of Appeals did not reversed the District Court as to exhaustion of State remedies under Title 28 United States Code 2254, thus, no erroneous construction of the exhaustion requirements could possibly exist.

Furthermore, the Eleventh Circuit Court of Appeals was correct in reversing the District Court and requiring an evidentiary hearing, since Respondent's claim of ineffective assistance of counsel, which if true, would be grounds for granting his pro se petition, was not altogether clear. Petitioner has failed to demonstrate a direct conflict necessary for the invocation of the Court's jurisdiction.

ARGUMENT

The Eleventh Circuit Court of Appeals did not reversed the District Court as to exhaustion of State remedies under Title 28 United States Code 2254 (c), thus, no error was committed. In Roberts vs. Wainwright, 666 F.2d 517 (11th Cir. 1982) the Eleventh Circuit ruled in part:

> "We do, however disagree with the district judge's conclusion that Roberts' claim of ineffective assistance was too conclusory to merit consideration. Initially, we observe that a court should interpret a pro se petition such as Roberts' more liberally than it might interpret a petition by an attorney. Haines vs. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1971); Dupart vs. United States, 541 F.2d 1148 (5th Cir. 1976); Haggard vs. Alabama, 494 F.2d 1187 (5th Cir. 1974). Liberally interpreted, we believe that the petition set forth a claim for relief that warrants further judicial inquiry. Roberts contends that counsel was inadequately prepared to defend him. His charge, if confirmed by the totality of circumstances in the case, would be grounds for granting his petition. See Baty vs. Balkcom, 661 F.2d 391 at 393-395 (5th Cir. 1981); Gaines

> vs. Hopper, 575 F.2d 1147 (5th Cir. 1978). We note, moreover, that the cases the district court cites, United States vs. Doran, 564 F.2d 1176, 1177-78 (5th Cir. 1977), cert. denied, 435 U.S. 928, 98 S.Ct. 1498, 55 L. Ed. 2d 524 (1978) and Cappetta vs. Wainwright, 433 F.2d 1027, 1029-30 (5th Cir. 1970), rejected claims of ineffective assistance only after an examination of the record disclosed no prejudice. Unlike the District Court, they did not reject the Petitioner's claim without consideration of its merit.
>
> The district court on remand should determine whether Roberts has in fact exhausted his state remedies and so should be permitted to file a habeas corpus petition in federal court. See Bufalino vs. Reno, 613 F.2d 568, 570 (5th Cir. 1980). If the Court finds that Roberts has exhausted his state remedies, it should inquire into the merits of his claim of ineffective assistance.

As a reminder, the Court of Appeals for the Eleventh Circuit did not reversed as to exhaustion. As a foundation for inquiring into the merits of Respondent's claim of ineffective assistance of counsel, the Eleventh Circuit simply directed the District

to determine if Respondent had in fact exhausted his state remedies so as to be permitted to file for habeas corpus relief in the federal court. See, Title 28 U.S.C. 2254 (b); Fay vs. Nois, 372 U.S. 391 (1963) and Lerma vs. Estelle, 585 F.2d 1297 (5th Cir. 1978). No erroneous construction of the exhaustion requirements occured in the decision complained of.

Furthermore, the Eleventh Circuit Court of Appeals was correct in reversing the District Court and requiring an evidentiary hearing, since Respondent's pro se claim of ineffective assistance of counsel, which if true, would be grounds for granting the petition,[1] was not altogether clear. Roberts, supra, at page 519.

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1 /. In Brooks vs. Texas, 381 F.2d 619 (5th Cir. 1967) and Roberts vs. Dutton, 368 F.2d 465 (5th Cir. 1966), the Fifth Circuit Court of Appeals had sustained ineffective assistance claims on the basis that the attorneys could have done more had they had more time.

Relying on Chambers vs. Maroney, 399 U.S. 42 (1970), Petitioner contends that Respondent's claim of ineffective assistance of counsel was to bare to warrant an evidentiary hearing and was properly treated summarily by the District Court. Wainwright vs. Sykes, 433 U.S. 72 (1977). To the contrary, federal evidentiary hearings are required under the standards incoporated in Title 28 U.S.C. 2254 (d), unless the state-court trier of fact has after a full hearing reliably found the relevant facts. See, Townsend vs. Sain, 372 U.S. 293 (1963).

In the instant case, no state records exist that was adequate for the District Court to properly evaluate Respondent's pro se claim of ineffective-counsel. In fact, Respondent 's claim of ineffective assistance of counsel was summarily rejected by the Florida Courts. Roberts vs. State, 388 So.2d 348 (Fla. 3rd DCA 1980). Unlike the District Court below, claims of ineffective assistance has been summarily rejected only after an examination of the records. See, Cappetta vs. Wainwright, 433 F.2d 1027 (5th Cir. 1970) and United States vs. Doran, 564 F.2d 1176 (5th Cir. 1977).

Accordingly, the Eleventh Circuit Court of Appeals without creating a conflict with Chambers, supra, correctly reversed the District Court on this point.

In addition, Petitioner also contends that the decision in Roberts "cuts down the correct standard for the burden of proof upon claim of ineffective counsel in a habeas corpus proceeding," under United States vs. Decoster, 624 F.2d 196 (D.C. Cir. 1979) and Knight vs. State, 394 So.2d 997 (Fla. 1981).

Like the exhaustion issue, the Court of Appeals for the Eleventh Circuit did not reversed the District as to specificity in pleading ineffectiveness of counsel and how counsel's performance prejudiced the Respondent. In fact, the Eleventh Circuit made it explicitly clear and in unmistakable terms that the burden of proof for showing ineffective assistance of counsel is, and remains, on Respondent Roberts throughout habeas corpus proceeding. Roberts, supra, footnote 3, at page 519.

Thus, the Court of Appeals decision in Roberts,

did not cut down in any degree, the standard of proving claims of ineffective assistance of counsel. Moreover, the adjudication of the Knight standard in Florida state courts, cannot, in habeas corpus proceeding under Title 28 U.S.C. 2254 be accepted as binding. Brown vs. Allen, 344 U.S. 443 (1953).

CONCLUSION

Based on Respondent's Brief, it is prayed that the Petition for a Writ of Certiorari be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Respondent's Brief has been forward to CALVIN L. FOX, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida, by U.S. Mail, this 29 day of June, 1982.

Steven Henry Roberts

Steven Henry Roberts
#A044449
Sumter Correctional Institution
Post Office Box 667 B-136
Bushnell, Florida 33513

Pro se

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF SUMTER)

Sworn to and subscribed before me, the undersigned Notary Public of the State of Florida, this 17 day of June, 1982.

Janet L. Schatt
Notary Public Signature

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JUNE 28, 1986
BONDED THRU MURDEN-ASHTON, INC.

My commission expires: _____

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October Term, 1981

LOUIE L. WAINWRIGHT,
Petitioner,
vs.
STEVEN HENRY ROBERTS,
Respondent.

CASE NO. 81-2309

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

COMES NOW Respondent, STEVEN HENRY ROBERTS, pursuant to Title 28 United States Code 1915 and Rule 46, Rules of the United States Supreme Court, and move the Court for permission to proceed in the above-styled cause without prepayment of costs and in forma pauperis. Respondent has attached his affidavit of poverty contesting his indigency.

Respectfully submitted,

Steven Henry Roberts

Steven Henry Roberts
#044449
Sumter Correctional Institution
P.O. Box 667
Bushnell, Florida 33513
B-136

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been fowarded by U.S. Mail to Calvin L. Fox, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami Florida 33128, on this 29TH day of JUNE, 1982.

Steven H. Roberts

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF SUMTER)

Sworn to and subscribed before me this day, the undersigned Notary Public of the State of Florida, County of Sumter, this 29TH day of JUNE, 1982.

Notary Public Signature

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JUNE 28, 1986
BONDED THRU NATIONAL-ASHTON, INC.

My commission expires: _____

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AFFIDAVIT OF POVERTY

LOUIE L. WAINWRIGHT,
Petitioner,
vs.
STEVEN HENRY ROBERTS,
Respondent.

CASE NO. 81-2309

I, STEVEN HENRY ROBERTS, Respondent, being first duly sworn, depose and say that in support of my Motion for Leave to Proceed in Forma Pauperis without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefore and that I believe I am entitled to redress.

1. I am presently unemployed and has been unemployed since March 13, 1980.

2. I have not received any income from any business, profession or forms of self-employment within the past twelve months.

3. I own no real estate, stocks, bonds, notes, automobiles or other valuable property.

4. I own no checking or savings account.

5. The following persons are dependent upon me for support:

1. Shawn T. Roberts / Daughter
2. Lateesha Roberts / Daughter

I understand that a false statement or answer to any questions in this affidavit will subject me to the penalties for perjury.

Respectfully submitted,

Steven Henry Roberts
#044449
Sumter Correctional Institution
P.O. box 667
Bushnell, Florida 33513
B-136

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been fowarded by U.S. Mail to Calvin L. Fox, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128, on this 29TH day of June, 1982.

Steven Henry Roberts

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF SUMTER)

Sworn to and subscribed before me, the undersigned Notary Public of the State of Florida, County of Sumter, this 29TH day of June, 1982.

Notary Public Signature

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JUNE 28, 1986
BONDED THRU MURDEN-ASHTON, INC.

My commission expires: